

ENTERED

December 04, 2024

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

DONDRE CARTER,

Plaintiff,

VS.

CUERO POLICE DEPARTMENT,
OFFICER J. BANDA, CAPTAIN ELLIS,

Defendants.

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Civil Case No. 6:23-CV-00008

**ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the October 23, 2024, Memorandum and Recommendation (“M&R”) prepared by Magistrate Judge Jason B. Libby. (Dkt. No. 34). Judge Libby made findings and conclusions regarding Plaintiff’s amended complaint, (Dkt. No. 15), and an inmate civil rights form, (Dkt. No. 17), that Judge Libby directed Plaintiff to submit with his amended complaint, (Dkt. No. 14 at 3). Plaintiff’s filings allege a civil rights action against the Cuero Police Department and two law enforcement officials. (Dkt. Nos. 15, 17); (Dkt. No. 34 at 1). Because Plaintiff’s claims against Defendants are subject to dismissal pursuant to *Heck v. Humphrey*, 512 U.S. 477 (1994), Judge Libby recommended that Plaintiff’s action be dismissed with prejudice as frivolous and for failure to state a claim under 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1) and that the dismissal of the case count as a “strike” for purposes of 28 U.S.C. § 1915(g). (Dkt. No. 34 at 1).

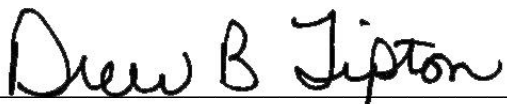
The Parties were provided proper notice and the opportunity to object to the M&R. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). No party filed an objection. As a result, review is straightforward: plain error. *Guillory v. PPG Indus., Inc.*, 434 F.3d 303, 308 (5th Cir. 2005). No plain error appears.

Accordingly, the Court accepts the M&R and adopts it as the Court's opinion. It is therefore ordered that:

- (1) Judge Libby's M&R, (Dkt. No. 34), is **ACCEPTED** and **ADOPTED** in its entirety as the holding of the Court;
- (2) The action filed by Plaintiff Dondre Carter, (Dkt. Nos. 15, 17), is **DISMISSED WITH PREJUDICE**;
- (3) The dismissal of this case constitutes a "strike" for purposes of 28 U.S.C. § 1915(g);¹ and
- (4) The Clerk of Court is **INSTRUCTED** to send notice of this dismissal to the Manager of the Three Strikes List for the Southern District of Texas at Three_Strikes@txs.uscourts.gov.

It is SO ORDERED.

Signed on December 4, 2024.


DREW B. TIPTON
UNITED STATES DISTRICT JUDGE

¹ Plaintiff is **WARNED** that if he accumulates three strikes, he will not be allowed to proceed *in forma pauperis* in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is under imminent danger of serious injury. *See* 28 U.S.C. § 1915(g).